

## **REMARKS**

The claim amendments and the following remarks are intended to fully respond to the office action mailed April 8, 2009. In that office action, claims 1, 3, 4, 12-14, 17, 19-22, 27, 29-31 and 36-40 were examined and all of the claims were rejected. Claims 1, 3, 4, 12-14, 17, 19-22, 27, 29-31 rejected under 35 U.S.C. § 102 as being allegedly anticipated by U.S. Patent No. 5,987,242 to Bentley et al. (hereinafter “Bentley”). Claims 36-40 were rejected under 35 U.S.C. § 103 as allegedly obvious over Bentley in view of U.S. Patent No. 5,915,250 to Jain et al. (hereinafter “Jain”). Reconsideration and further examination of the claims is respectfully requested in light of the claim amendments above and the remarks below.

### **Claim Rejections – 35 U.S.C. 102**

Claim 1, 3, 4, 12-14, 17, 19-22, 27, 29-31 and 36-40 were rejected under 35 U.S.C. 102 as allegedly anticipated by Bentley. Bentley does not teach all of the elements of the claims. Although some of the claims have been amended, the amendments have been made to expedite allowance of subject matter in the present application and are not made for purposes of patentability.

Claim 1 recites *inter alia* “the foundational item type defining attributes including a region of interest attribute of one of the photo items, the region of interest attribute including a field identifying at least one person within a first region of the one of the photo items.” Bentley does not teach or suggest such a feature.

Bentley is directed at computerized modeling systems (CMS) that can be used with different platforms. *See Bentley*, col. 5, lns. 36-41. Bentley describes that a first CMS resides in a first platform memory and a second platform-dependent CMS resides in a second platform memory. *See id.* at col. 5, lns. 50-53. Each CMS provides CMS services that allow for retrieving a model from a storage device, manipulating the model, changing the model by adding and removing persistent objects, and persistently saving the model to the storage device. *See id.* at col. 5, lns. 50-53.

Bentley does not make any mention of “photo items” as recited in claim 1. Bentley is directed at computer aided design (CAD) systems and not systems for storing or manipulating photos. Thus, claim 1 is distinct and patentable over Bentley because Bentley fails to teach “photo items” and “the foundational item type defining attributes including a region of interest attribute of one of the photo items, the region of interest attribute including a field identifying at least one person within a first region of the one of the photo items.” Claim 14 and new claims 41 and 42 depend upon claim 1 and are patentable for at least the same reasons.

Claim 17 recites “wherein one of the image items is extended to define a photo schema that defines a foundational item type from which photo items manipulated in the hardware/software interface system are derived, the foundational item type defining attributes including a region of interest attribute in one of the photo items, the region of interest attribute including a field identifying at least one person within a first region of the one of the photo items and a second field identifying at least one region of interest within a second region of the one of the photo items.” Accordingly, for similar reasons as indicated above with respect to claim 1, claim 17 and its dependent claims 19, 22, 29, 30, and new claims 43 and 44 are distinct and patentable over Bentley.

Claim 31 recites “establishing a link between a photographic digital image item defined by the foundational item and an item pertaining to at least one person represented in a region of the photographic digital image item.” As indicated above, Bentley does not have any teaching regarding photographs and thus does not teach “photographic digital image items,” as recited in claim 31, much less “establishing a link between a photographic digital image item defined by the foundational item and an item pertaining to at least one person represented in a region of the photographic digital image item.” Claim 31 and its dependent claims 36, 37, 39, and 40 are therefore distinct and patentable over Bentley.

### **Claim Rejections – 35 U.S.C. 103**

Claims 36-40 were rejected under 35 U.S.C. 103 as allegedly obvious over Bentley and Jain. Applicants respectfully disagree as the combination of Bentley and Jain fail to teach all the elements of claims 36-40. Claim 36, 37, 39, and 40 depend upon claim 31. As described above,

Bentley does not teach all of the elements of independent claims, 1, 17, or 31 and Jain does not compensate for the deficiency in Bentley.

Jain discloses a content-based image retrieval system which manages image assets by directly representing their visual attributes. *See Jain*, col. 3., lns. 59-63. Although Jain discloses that these digital assets can be photos (*see id.* at col. 4, lns. 49-58), Jain still fails to teach the specific elements recited in the claims.

For example, Jain does not teach or suggest “the foundational item type defining attributes including a region of interest attribute of one of the photo items, the region of interest attribute including a field identifying at least one person within a first region of the one of the photo items,” as recited in independent claims 1 and 17. Jain makes no mention of a foundational item that has, as attributes, identified regions of a photo including “including a field identifying at least one person within a first region of the one of the photo items.” The office action points to FIG. 3 as showing this feature. Applicants respectfully disagree.

FIG. 3 in Jain is a screen shot of an interface used to submit queries. FIG. 3 shows a “creator” field that can be used to find project created by a particular author. A creator field used in a search is not the same as an attribute with a field that identifies a person “within a first region of the one of the photo items.” There is simply no teaching in Jain of a “foundational item type defining attributes including a region of interest attribute of one of the photo items, the region of interest attribute including a field identifying at least one person within a first region of the one of the photo items.” For at least this reason, independent claims 1 and 17 and their dependent claims are patentable over the combination of Bentley and Jain.

With respect to claim 31, Jain does not teach “establishing a link between a photographic digital image item defined by the foundational item and an item pertaining to at least one person represented in a region of the photographic digital image item.” As previously noted, FIG. 3 cited by the office action merely shows a field for a creator of a project. There is no teaching or suggestion in Jain of “establishing a link between a photographic digital image item defined by the foundational item and an item pertaining to at least one person represented in a region of the photographic digital image item.” For at least this reason, independent claim 31 and its dependent claims 36, 37, 39, and 40 are patentable over the combination of Bentley and Jain.

**Conclusion**

This Amendment fully responds to the Office Action mailed on April 8, 2009. Still, that Office Action may contain arguments and rejections that are not directly addressed by this Amendment because they are rendered moot in light of the preceding arguments in favor of patentability. Hence, failure of this Amendment to directly address an argument raised in the Office Action should not be taken as an indication that the Applicant believes the argument has merit. Furthermore, the claims of the present application may include other elements, not discussed in this Amendment, which are not shown, taught, or otherwise suggested by the references of record. Accordingly, the preceding arguments in favor of patentability are advanced without prejudice to other bases of patentability, which may be argued at a later time.

The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment with respect to this patent application to deposit account number 13-2725.

In light of the above remarks and amendments, it is believed that the application is now in condition for allowance and such action is respectfully requested. Should any additional issues need to be resolved, the Examiner is requested to telephone the undersigned to attempt to resolve those issues.

Respectfully submitted,

Dated: July 8, 2009



/René A. Pereyra/  
René A. Pereyra, Reg. No. 45,800  
Merchant & Gould P.C.  
P.O. Box 2903  
Minneapolis, MN 55402-0903  
(303)357.1637